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12 Specially Appearing for Defendant
12 CHARMING SHOPPES OF DELAWARE, INC.
13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 SHAMEIKA MOODY, as an individual
18 and on behalf of others similarly situated,
19

Plaintiff,

20 vs.
21 CHARMING SHOPPES OF
21 DELAWARE, INC., a corporation, and
22 DOES 1 through 20, inclusive,
23

Defendant.

Case No. C 07-06073 BZ

**DEFENDANT CHARMING SHOPPES OF
DELAWARE, INC.'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION**

Date: January 16, 2008
Time: 10:00 a.m.

[Fed. R. Civ. Proc. 12(b)(2)]
[SPECIAL APPEARANCE ONLY]

1

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1 **I. INTRODUCTION**

2 Plaintiff Shameika Moody (“Plaintiff”) brings this purported class action solely against
 3 Defendant Charming Shoppes of Delaware, Inc., ***which has never employed Plaintiff and which***
 4 ***has almost no connection with California***, alleging various claims under the California Labor
 5 Code.

6 Defendant Charming Shoppes of Delaware, Inc. (“Defendant”) has minimal contact with
 7 California. Defendant does not have “substantial” or “continuous and systematic” contacts with
 8 California for general personal jurisdiction. Defendant also has not “purposefully availed” itself
 9 of the privileges of doing business in California to establish specific personal jurisdiction. Thus,
 10 the exercise of personal jurisdiction over Defendant would violate federal due process
 11 requirements, and this Court must dismiss this action.¹

12 **II. FACTUAL BACKGROUND**

13 **A. Plaintiff’s Wage and Hour Claims**

14 Plaintiff brings this action on behalf of a purported class of employees who allegedly
 15 worked for Defendant in California from October 11, 2003 through the present. *See Complaint, ¶*
 16 17. Plaintiff worked as an Assistant Store Manager from around November, 2006 through early
 17 July, 2007 at a Lane Bryant retail store in California. *See Complaint, ¶ 8.*

18 The Complaint alleges on behalf of Plaintiff and each of the putative class members the
 19 following wage and hour claims against Defendant: (1) failure to pay overtime wages in violation
 20 of Labor Code Section 1194 and the California Industrial Welfare Commission Wage Orders (*See*
 21 Complaint ¶¶ 30-38); (2) failure to timely pay wages due at termination in violation of Labor
 22 Code Sections 201 and 202 and recovery of penalties under Labor Code Section 203 (*See*
 23 Complaint ¶¶ 39-43); (3) failure to provide meal periods in violation of California Labor Code

25 ¹ Under California’s long-arm statute, both federal and state courts sitting in California “may
 26 exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the
 27 United States.” Cal. Code Civ. Proc. § 410.10; *Zeta-Jones v. The Spice House*, 372 F. Supp. 2d
 28 568, 570 (C.D. Cal. 2005) (“California’s long-arm jurisdictional statute is coextensive with
 federal due process requirements, so that the jurisdictional analysis under state law and federal
 due process are the same.”).

1 Sections 226.7 and Section 11 of the California Industrial Welfare Commission Wage Order No.
 2 7 (See Complaint, ¶¶ 44-50); (4) failure to comply with itemized employee wage statement
 3 provisions in violation of Labor Code Section 226 (See Complaint ¶¶ 51-54); and (5) violation of
 4 Business and Professions Code Section 17200, *et seq.* based upon the above alleged violations
 5 (See Complaint ¶¶ 55-60).

6 **B. Charming Shoppes of Delaware, Inc.**

7 At all times since at least January 1, 2002, Lane Bryant, Inc. ("Lane Bryant") has owned
 8 and operated all Lane Bryant stores in California. Declaration of John J. Sullivan ("Sullivan
 9 Dec."), ¶ 10; Declaration of Anthony Camoratto ("Camoratto Dec."), ¶ 4. Defendant does not
 10 own an interest in Lane Bryant, Inc.; has never employed Plaintiff or anyone else in California;
 11 and is not a proper defendant in this action. Sullivan Dec., ¶ 6-8; Camoratto Dec., ¶ 5-6

12 Defendant is a wholly-owned subsidiary of Charming Shoppes, Inc. ("CSI") and is
 13 incorporated and headquartered in Pennsylvania. Sullivan Dec., ¶ 3. Defendant provides certain
 14 shared services to the operating subsidiaries of CSI, including Lane Bryant which operates the
 15 Lane Bryant stores and other subsidiaries that operate the Catherine's and Fashion Bug retail
 16 stores. Sullivan Dec., ¶ 3; Camoratto Dec., ¶ 2. As part of these shared services, Defendant acts
 17 as common paymaster for all employees employed in the Lane Bryant stores. In this capacity,
 18 since at least January 1, 2002, Defendant has caused all wage payments to be made to the
 19 employees of Lane Bryant stores, either by direct deposit from its bank account or through
 20 payroll checks drawn by Defendant on its bank account. These wage payments are made from
 21 Defendant's bank accounts in Charlotte, North Carolina. Camoratto Dec., ¶¶ 2-3.

22 Defendant has no office, mailing address, telephone listing, hard assets, or bank accounts
 23 in California. Defendant does not engage in any business activities in California apart from
 24 providing certain shared services to other subsidiaries of CSI. Defendant does not solicit
 25 California residents; manufacture, purchase, or sell goods in California; or advertise goods or
 26 services in California. Defendant does not pay taxes in California, with the exception of the
 27 payment of California payroll taxes incident to Defendant acting as a common paymaster for
 28 other subsidiaries of CSI. Defendant does not exert management control over the operations of

1 other CSI subsidiaries, including but not limited to Lane Bryant. Sullivan Dec., ¶¶ 6-8.

2 Moreover, Defendant does not manage or direct the work of any employees who report to
 3 or are resident in California, including, without limitation, the employees who work in the Lane
 4 Bryant stores. Sullivan Dec., ¶ 8. Defendant does not hire or select these employees and does not
 5 determine the amounts of wages to be paid to these employees. In acting as common paymaster
 6 for employees at the Lane Bryant stores, Defendant only issues wage payments based on the
 7 employee and wage information that is provided to Defendant by Lane Bryant, which owns and
 8 manages those stores. Defendant does not determine, direct, or enforce the policies or practices
 9 of Lane Bryant stores related to compensation, meal periods, or wage statements. Camoratto
 10 Dec., ¶ 6.

11 III. LEGAL ARGUMENT

12 A. This Court Cannot Exercise Personal Jurisdiction Over Defendant.

13 Fundamental precepts of due process require that non-resident defendants have certain
 14 “minimum contacts” with the forum state to ensure that the exercise of either general or specific
 15 personal jurisdiction does not “offend traditional notions of fair play and substantial justice.”
 16 *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). The purpose
 17 of the “minimum contacts” test articulated in *International Shoe* is twofold: (1) to protect
 18 defendants against the burdens of litigating in a distant, inconvenient forum; and (2) to ensure that
 19 states do not step beyond the limits of their sovereignty under a federal system of government.
 20 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564 (1980).

21 This Court cannot constitutionally exercise general personal jurisdiction over Defendant.
 22 As an out-of-state entity with minimal connections to California, Defendant does not have the
 23 “substantial” or “continuous and systematic” contacts with California necessary to establish
 24 general personal jurisdiction over it. Furthermore, this Court cannot exercise specific personal
 25 jurisdiction over Defendant because, again, Defendant has insufficient contacts with California.
 26 Thus, this Court does not have the constitutional or statutory authority to adjudicate this action as
 27 to Defendant, and therefore must dismiss this action brought solely against Defendant.

28

1. **No General Personal Jurisdiction Over Defendant Exists.**

2 Defendant does not have contacts with California sufficient to justify the exercise of
 3 general personal jurisdiction over it. General personal jurisdiction ordinarily exists only if a
 4 defendant is *domiciled* in the forum state or its activities there are “*substantial, continuous and*
 5 *systematic.*” *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445, 72 S. Ct. 413, 418
 6 (1952) (emphasis added); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,
 7 414-19, 104 S. Ct. 1868, 1872-74 (1984) (finding that defendant did not have the “kind of
 8 continuous and systematic general business contacts” required to establish general jurisdiction).
 9 In addition, even if a defendant is found to have engaged in “substantial” or “continuous and
 10 systematic” activities in the forum state, the exercise of general personal jurisdiction still must be
 11 determined judicially to be “reasonable” (i.e., that such exercise “comports with fair play and
 12 substantial justice”). *Amoco Egypt Oil Co. v. Leonis Navigation Co., Inc.*, 1 F.3d 848, 851, fn. 2
 13 (9th Cir. 1993) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-78, 105 S. Ct. 2174,
 14 2184-85 (1985)). The level of contact with the forum state necessary to establish general
 15 personal jurisdiction is “intended to be a fairly high standard” (*Brand v. Menlove Dodge*, 796
 16 F.2d 1070, 1073 (9th Cir. 1986)) and “requires that the defendant’s contacts be of the sort that
 17 approximate physical presence.” *Bancroft & Masters, Inc. v. Augusta National, Inc.*, 223 F.3d
 18 1082, 1086 (9th Cir. 2000).

19 As set forth above, Defendant is an out-of-state entity and does not conduct either
 20 “substantial” or “continuous and systematic” activities in California. Defendant is formed under
 21 the laws of Pennsylvania and has its principal operations there. Sullivan Dec., ¶ 3. Defendant’s
 22 only contacts with California are the limited services, including payroll duties, that it provides
 23 from its locations in other states to other subsidiaries of CSI, including Lane Bryant, Inc., which
 24 operates all Lane Bryant stores in California. Sullivan Dec., ¶ 5; Camoratto Dec., ¶ 3, 6.

25 It is not enough for a defendant to engage in continuous contacts touching the forum state.
 26 Rather, the acts must be continuous and *substantial* and “of the sort that approximate physical
 27 presence.” *Bancroft*, 223 F.3d at 1085. Defendant clearly lacks an actual physical presence in
 28 California. It has no office, employees, or hard assets in the state. Sullivan Dec., ¶ 5. Its limited

1 contacts—implemented from outside the state and limited to providing payroll and other services
2 to other subsidiaries of the corporate parent—are insufficient to “approximate” a physical
3 presence, as is required for general jurisdiction. *Cf. Resolution Trust Corp. v. First of America*
4 *Bank*, 796 F.Supp. 1333, 1336-37 (C.D. Cal. 1992) (finding that out-of-state bank’s limited
5 financial interaction with California in the form of correspondent relationships with in-state banks
6 for check processing, wire transfers, or similar contacts did not constitute sufficient contacts for
7 personal jurisdiction in California).

2. No Specific Personal Jurisdiction Over Defendant Exists.

9 Plaintiff also cannot establish specific personal jurisdiction over Defendant because it
10 lacks the constitutionally-mandated “minimum contacts” with California required for the exercise
11 of such jurisdiction. Moreover, even if such contacts did exist (which they do not), the claims at
12 issue do not arise out of any activities by Defendant in California.

13 The Ninth Circuit has established a three-part test to determine if the exercise of specific
14 personal jurisdiction would comport with due process: “(1) the defendant must perform an act or
15 consummate a transaction within the forum, purposefully availing himself of the privilege of
16 conducting activities in the forum and invoking the benefits and protections of its laws; (2) the
17 claim must arise out of or result from the defendant’s forum-related activities; [and] (3) exercise
18 of jurisdiction must be reasonable.” *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 588 (9th Cir. 1993)
19 Plaintiff can make no such showing here.

20 As established in the supporting Declarations of John J. Sullivan and Anthony Camoratto,
21 Defendant does not directly conduct any business in California – let alone “purposefully avail”
22 itself of the privileges of doing business in California. Rather, Defendant only performs limited
23 administrative functions in California for CSI subsidiaries, including Lane Bryant. Sullivan Dec.,
24 ¶ 5; Camoratto Dec., ¶ 2-3, 6. Its limited acts do not constitute the transaction of business for
25 purposes of exercising personal jurisdiction over Defendant.

26 Even if the first part of the test was met (which it is not), there is no nexus between
27 Plaintiff's wage and hour claims and Defendant's limited transactions in California. Plaintiff on
28 behalf of a purported class of "non-exempt employees" alleges that her employer (who was Lane

1 Bryant, *not* Defendant) failed to pay her and others overtime wages, to pay all final wages upon
 2 termination, and to provide proper meal periods. *See* Complaint, ¶¶ 33-34, 40-41, 45. These
 3 claims do not arise out of or result from Defendant's limited administrative task of generating
 4 Plaintiff's pay checks. Rather, they arise out of alleged policies and practices at Lane Bryant
 5 retail stores in California. Defendant does not own, operate, control, or manage these stores. The
 6 Complaint fails to identify any specific person or people whom Defendant employs or employed
 7 who took, or failed to take, some action leading to the claims at issue. Plaintiff's claims in this
 8 action do not arise out of any California activities on the part of Defendant. Indeed, Defendant
 9 does not even have employees in California. Consequently, Plaintiff cannot meet her *prima facie*
 10 burden of establishing specific personal jurisdiction. *See, e.g., Omeluk v. Langston Slip &*
 11 *Batbyggeri A/S*, 52 F.3d 267, 272 (9th Cir. 1995) (injury to plaintiff would have occurred without
 12 regard to defendant's contacts with forum state).

13 **IV. CONCLUSION**

14 Defendant lacks the "substantial" or "systematic and continuous" contacts required to
 15 establish general jurisdiction over them. Further, this Court cannot exercise specific personal
 16 jurisdiction over Defendant because Plaintiff's wage and hour claims in no way arise out of any
 17 California activities on its part. For these reasons, this Court lacks jurisdiction over Defendant
 18 and therefore must dismiss this action.

19 Dated: December 7, 2007

MORGAN, LEWIS & BOCKIUS LLP

20
 21 By _____ /S/
 22

Albert Huang
 23 Specially Appearing for Defendant
 24 CHARMING SHOPPES OF
 25 DELAWARE, INC.